

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 99-31332

GAP ENTERPRISES, INC.
d/b/a CUMBERLAND GAP CONVENTION CENTER
d/b/a CUMBERLAND GAP INN
d/b/a SHILLALAH VILLAGE
d/b/a YE OLDE TEA & COFFEE SHOPPE

Debtor

MEMORANDUM ON DEBTOR'S OBJECTION TO CLAIMS

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RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

This matter is before the court on the Objection to Claims filed by the Debtor, Gap Enterprises, Inc., on December 6, 1999, as amended by an Amended Objection to Claims filed December 7, 1999.¹ Pursuant to the Pretrial Order entered February 3, 2000, the court must resolve whether Clyde and Maureen Moore have claims against the Debtor, the amount of their prepetition and postpetition claims, if any, and whether their claims were satisfied or released on September 15, 1999, pursuant to a closing under a Real Estate and Stock Purchase Agreement. The Debtor's Brief in Support of Objection to Claims of Clyde and Maureen Moore and the Pretrial Brief of Clyde and Maureen Moore were filed on February 16, 2000. After a trial of these issues on February 23, 2000, the court reserved judgment. At the court's request, the parties filed posttrial proposed findings of fact and conclusions of law.

This is a core proceeding. 28 U.S.C.A. § 157(b)(2)(B) (West 1993).

I

In 1994, Clyde Moore and John Stanley were partners in Le Banquet, Ltd., a partnership that operated Ye Olde Tea & Coffee Shoppe, a restaurant in Cumberland Gap, Tennessee. They brought in a third partner, Chris Gibbs, in September of that year. There is virtually no evidence of a written agreement regarding any aspect of the partnership or its operations. All three men testified at trial that they each had owned a third of the partnership.

¹ The Debtor's Amended Objection to Claims appears identical to its Objection to Claims.

In late 1994, the three men met and agreed that each would receive regular compensation for their ongoing contribution to the partnership. The payments were to begin in January 1995, at which time a renovation of the property would be complete and the restaurant would be running at full capacity. Mr. Moore testified that he repeatedly asked that the agreement be memorialized in writing, but that was never accomplished.

The agreement included specific amounts to be received by each partner. The three partners testified that under the agreement John Stanley would oversee operations at the restaurant, especially the kitchen, and would receive \$600.00 each week. All three testified that Chris Gibbs would be the financial manager. The testimony of each partner was different with respect to the amount Chris Gibbs would receive. John Stanley testified that Gibbs was to receive \$500.00 each week, Clyde Moore testified that Gibbs was to receive \$350.00 each week, and Gibbs testified that he was to receive \$300.00 each week.

With regard to Clyde Moore, he and John Stanley testified that he would be compensated for allowing the restaurant to use his beverage license, antiques and furnishings, which included tables, chairs and some kitchen equipment. Clyde Moore testified that the Debtor was still using his beverage license at the time of trial and that he was demanding that it stop. Chris Gibbs testified that Clyde Moore's monthly compensation was for rent on the restaurant property, which he owned with his wife, Maureen Moore. Clyde Moore denies that the payment was for rent. Again, there was a difference in the testimony as to the amount Clyde Moore would receive. John Stanley and Clyde Moore testified that Mr. Moore was to receive at least \$2,000.00 each month for every month that either John Stanley or Chris Gibbs received payment. They testified that if

business was good and they decided to increase the amounts paid to John Stanley and Chris Gibbs, then Clyde Moore would also receive an increase in his payment equal to the average of the increase received by the other men. Chris Gibbs testified that Clyde Moore was to receive \$1,500.00 each month with no provision for increases.

All three partners testified regarding the partnership's metamorphosis into Gap Enterprises, Inc., the Debtor in this Chapter 11 case. It is clear, however, that Chris Gibbs directed the change in the partnership's legal status, while Clyde Moore and John Stanley had less knowledge about it. In 1995, Chris Gibbs decided that the partnership should incorporate in order to decrease the partners' exposure to liability. He testified that Le Banquet, Ltd., Inc. was formed, that it received all of the partnership assets and liabilities, and that soon thereafter it was merged with the Debtor, Gap Enterprises, Inc., which took over operation of the restaurant.² Chris Gibbs also testified that Gap Enterprises, Inc. was formed in 1995 to facilitate the financing of renovations and construction of the restaurant, as well as an inn, convention center, and a depot, all of which were part of a resort development that the partners had undertaken with their families.³ John Stanley, Clyde Moore, Chris Gibbs and his mother Joanne Gibbs, each owned 25% of the Debtor.

The testimony of John Stanley demonstrated that he either did not understand or was not aware of the merger that was taking place and that despite the merger, the business operated under

² Ken Gilbert, an accountant retained by Chris Gibbs to prepare tax returns for the business, testified at trial that the assets and liabilities of Le Banquet, Ltd. were merged into the books of Gap Enterprises, Inc. in June 1996. He testified that he never prepared a tax return for Le Banquet, Ltd., Inc. because he had no knowledge of it participating in any transactions.

³ On December 8, 1995, the Debtor executed a Construction / Commercial Note, guaranteed by Chris Gibbs, John Stanley, and Clyde Moore, among others, to obtain financing for that purpose.

the same oral compensation agreements throughout his involvement. He testified that the partners agreed not to merge Gap Enterprises, Inc. and the partnership; that he was not aware that Le Banquet, Ltd., Inc. had been formed, however, he knew that Gap Enterprises, Inc. had been formed prior to his departure from the business; and that he knew that he had owned a 25% interest in the Debtor. He testified that he was not aware that Gap Enterprises, Inc. and the partnership had been merged during his participation in the business and that when he sold his interest in February 1996, he believed that he was selling his 25% interest in Gap Enterprises, Inc. and his one-third interest in the partnership. Finally, he testified that the arrangement for regular payments to himself, Clyde Moore, and Chris Gibbs was not changed after the formation of Gap Enterprises, Inc. and had not changed as of February 1996.

Each partner testified about the compensation payments made to them and each other. Chris Gibbs and Clyde Moore testified that Clyde Moore received only one payment of \$1,500.00 under the agreement in either January or February 1995. Clyde Moore testified that he repeatedly asked Chris Gibbs for the payments due to him and that Mr. Gibbs would respond that he decided that he could not make the payments because the business was barely surviving. John Stanley testified that he received complete payment under the compensation agreement until February 1996 when he sold his interest in the business to Chris Gibbs and stopped working for it. Chris Gibbs received \$14,100.00 from the partnership in 1995 and \$50,000.00 from Gap Enterprises, Inc. in 1996, 1997, and 1998. In 1999, he was to receive a salary from Gap Enterprises, Inc. of \$75,000.00. He received that amount from March through October 1999.

Clyde Moore testified that in May 1997 he prepared a statement of the payments owed to him as of that date and sent the statement to Chris Gibbs. Chris Gibbs denies receiving the statement or learning of it until depositions in this matter had begun.

In addition to being a partner in the restaurant business and eventually a shareholder of the Debtor, Clyde Moore, along with Maureen Moore, leased real property to Le Banquet, Ltd., Inc. and the Debtor. On June 2, 1995, Clyde and Maureen Moore, as lessors, and Le Banquet Ltd., Inc., by Chris Gibbs, as lessee, executed a Commercial Lease of the restaurant property. The lease was for an initial term of twenty-five years beginning May 1, 1995, with an option to renew. In addition, the lease provided for the payment of rent as follows:

Landlord and tenant agree that there shall be no rent payable upon the leased premises during the initial five (5) years of the first term hereof. At the end of the initial five (5) year period, the tenant shall pay, as rent, the sum of One Hundred Sixty Five Thousand Dollars (\$165,000.00), said sum being equal to the landlord's original cost for the leased premises, payable over the remaining twenty (20) years of the initial term, in 240 equal monthly installments without interest

On November 13, 1995, Clyde and Maureen Moore, as lessors, and lessee Gap Enterprises, Inc., by Chris Gibbs as president, executed another Commercial Lease of the property on which Gap Enterprises, Inc. operated the inn. The lease was for an initial term of twenty-five years beginning November 13, 1995, with an option to renew. It also provided that "[l]andlord and tenant agree that during the first (25) twenty-five year period the lease payment shall be

\$200.00 Two Hundred Dollars per month beginning June 1, 1996.” The Debtor admits that as of September 15, 1999, rent payable had accrued in the amount of \$6,800.00.⁴

Eventually, the Moores sold the various parcels of real property, much of the personal property located thereon, and Clyde Moore’s stock in the Debtor to Chris Gibbs. In July 1998, the Moores, along with Chris Gibbs, Leslie Gibbs, Joanne Gibbs, and David Cook, President of Home Federal Bank, signed a Real Estate and Stock Purchase Agreement, under which the Moores were the sellers and Chris Gibbs was the buyer. The agreement provided for the sale of the following property:

1. **Sale of Property.** Seller hereby agrees to sell and convey and Purchaser hereby agrees to purchase all those lots, tracts or parcels of land described on Exhibit A attached hereto and incorporated herein by reference, together with all improvements thereon and rights, ways, alleys, waters, privileges, easements, appurtenances and advantages thereto belonging or in anywise appurtenant thereto and all of the fixtures and articles of personal property including, but not being limited to, machinery and equipment, attached to or appurtenant to said land or used previously or presently, in connection with the operation of the improvements on said land, including, without limitation, all window treatments, blinds, and curtains, fireplace screens, light fixtures, ceiling fans, chandeliers, appliances, furniture, fixtures, model “T” Ford, and artwork (but specifically excluding the contents of the Restaurant’s antique bank vault) all of which are hereinafter referred to as the “Premises.” This sale shall further include all right, title, and interest of the Seller in and to any land lying in the bed of any and all public or private streets . . . in front of or abutting the Premises and the Stock.

The total purchase price under the agreement was \$432,500.00, to be paid under the following provision:

3. **Payment of Purchase Price.** Buyer shall pay Home Federal Bank One Hundred Thousand Dollars (\$100,000.00) of the Purchase Price, which represents

⁴ In their Proof of Claim, the Moores state that \$1,200.00 of the total amount accrued postpetition and designate that portion of their claim as a priority claim.

payment for the personal property listed in Paragraph 1, at Closing to obtain releases of Home Federal's liens on the personal property (outlined in Paragraph 1) to be acquired hereunder and a partial release of liens on the real property. . . . The balance of the Purchase price shall be evidenced by an unsecured Promissory Notes [sic]. . . . Said Notes shall be signed by Purchaser individually and by the Tearoom Restaurant, LLC; Cumberland Gap Inn, LLC; Cumberland Gap Shoppes/Entertainment & Bakery, LLC (collectively "Makers"). Buyer shall also obtain releases of all obligations of Seller to Gap Enterprises, Inc. and Leslie and Joanne Gibbs.

The agreement also provides that at the closing of the sale Chris Gibbs would have paid the purchase price as described in paragraph 3 and that the Moores would deliver to him the warranty deeds for the various parcels of real property purchased, a blanket bill of sale for the personal property purchased, Mr. Moore's certificates of stock endorsed and assigned to Gibbs, and the combination to a lock in the restaurant.

The Debtor filed its petition under Chapter 11 on March 29, 1999.

At the closing of the sale under the Real Estate and Stock Purchase Agreement on September 15, 1999, the Moores and Gap Enterprises, Inc., by Chris Gibbs as president, executed terminations of the leases on two properties that the Moores sold to Chris Gibbs. Each lease termination provides that the "Lessors (Moores) and Lessee (Gap Enterprises, Inc.) hereby release each other from any and all liability arising from the terms and provisions of said Lease." Although the Moores sold the inn property at the closing pursuant to the Real Estate and Stock Purchase Agreement, the Moores and Gap Enterprises, Inc. did not execute a termination of the November 13, 1995 Commercial Lease for the inn property or a release of Debtor's liability under that lease.

II

Clyde Moore filed his claim in the total amount of \$112,500.00. That amount represents Mr. Moore's claim for payments of \$2,000.00 for each month from January 1995, when the compensation agreement was to take effect, through September 15, 1999, when the Moores sold property and Mr. Moore's stock to Chris Gibbs, less the \$1,500.00 payment that Clyde Moore received in early 1995.⁵ The Debtor objects to Clyde Moore's claim for compensation on the grounds that any agreement to pay Clyde Moore was for \$1,500.00 in rent and that Clyde Moore is not entitled to payments for any months following the dissolution of the partnership.⁶

The court finds the testimony of John Stanley and Clyde Moore to be more credible than that of Chris Gibbs with respect to the aspects of the compensation agreement related to Clyde Moore. Chris Gibbs testified that Clyde Moore was to receive \$1,500.00 each month as rent for the restaurant premises. Le Banquet Ltd., Inc., however, rented that property under a lease executed on June 2, 1995, which was retroactive to May 1, 1995, just months after the compensation agreement was reached. Under the lease, no rental payments were due for five years, at which time the Moores would receive \$165,000.00 in 240 equal monthly payments, which presumably would be in the amount of \$687.50.

⁵ Twelve thousand dollars of that amount accrued postpetition and is designated as a priority claim on Clyde Moore's Proof of Claim.

⁶ The Debtor asserts in its proposed findings of fact and conclusions of law that the partnership dissolved in May 1995.

Clyde Moore and John Stanley testified that Clyde Moore was to receive \$2,000.00 monthly for permitting the restaurant to use his beverage license and some antiques and furnishings that he owned. Both of them testified that in the event of an increase in the payment to Chris Gibbs and John Stanley, Clyde Moore would receive an increase and their testimony included the same formula for the increase.

The court's conclusion that the payments owing to Clyde Moore under the agreement were in exchange for the use of his license, furnishings, and antiques is further supported by the fact that those items remained the separate property of Clyde Moore. In their proposed findings of fact and conclusions of law, the parties agree that a partnership had existed and that it was governed by the Uniform Partnership Act as adopted in Tennessee at TENN. CODE ANN. § 61-1-101 to 61-2-1208 (1989 & Supp. 1999). Section 61-1-107 provides that "[a]ll property brought into the partnership stock or subsequently acquired, by purchase or otherwise, on account of the partnership is partnership property." The determination as to whether particular property "is owned by an individual or a partnership is primarily a matter of the intention of the parties." *Dickenson v. American Gen. Fin., Inc. (In re Capps)*, 135 B.R. 821, 824 (Bankr. E.D. Tenn. 1992) (citing *Holcomb v. Fulton (In re Fulton)*, 43 B.R. 273 (Bankr. M.D. Tenn. 1984)). Intent is a factual issue which can be established by "apparent intent at the time the property is acquired, as shown by the facts and circumstances surrounding the transaction of the purchase, considered with the conduct of the parties toward the property after the purchase." *Id.* (quoting 59A Am.Jur.2d Partnership § 355 (1987)).

There was little evidence about the beverage license other than it was obtained by Clyde Moore and was used in the operation of the restaurant. Beverage licenses are not transferable under Tennessee law. See TENN. CODE ANN. § 57-3-212 (1989). The court finds that the license was Clyde Moore's separate property. Regarding the antiques and furnishings, Clyde Moore and John Stanley testified that they were Clyde Moore's property which he allowed the partnership to use. There is no evidence that the three partners intended that the antiques and furnishings would become partnership property. In addition, when Clyde Moore sold his stock in the Debtor and some real property to Chris Gibbs in 1999, under the Real Estate and Stock Purchase Agreement, he also sold the furnishings. Clyde Moore specifically excluded from the sale certain items in the antique vault. The court finds that the antiques and furnishings were the separate property of Clyde Moore.

III

The partners of Le Banquet, Ltd. agreed in late 1994 that for each month that either John Stanley or Chris Gibbs received payment for completing their duties under the agreement Clyde Moore would receive \$2,000.00 in exchange for the partnership's use of his license, antiques, and furnishings. The court must now decide the extent to which Clyde Moore has a valid claim based on that agreement and whether the claim was released under the Real Estate and Stock Purchase Agreement.

The Uniform Partnership Act provides that “[n]o partner is entitled to remuneration for acting in the partnership business” TENN. CODE ANN. § 61-1-117(6) (Supp. 1999).

Nonetheless, that statutory provision is subject to any agreement made by the partners. See *Fulcher v. Allen*, 2 S.W.3d 207, 216 (Tenn. Ct. App. 1999) (finding that oral agreement made by majority of partners to pay one partner a commission as a management fee was valid under the Uniform Partnership Act). Such agreements must be made by a majority of the partners and need not be written. See *id.* Even if Chris Gibbs believed he was agreeing to compensation for Clyde Moore in the amount of \$1,500.00 each month for rent, a majority of the partnership, consisting of John Stanley and Clyde Moore, agreed to the terms of Clyde Moore's compensation of \$2,000.00 monthly for permission to use his license, antiques, and furnishings. In the present matter, the partners' compensation agreement is valid under the Uniform Partnership Act.

Chris Gibbs testified that the partnership paid him approximately \$14,000.00 in 1995, and John Stanley testified that he received all of his weekly payments from January 1995 through February 1996. Accordingly, when the partnership dissolved, it owed Clyde Moore \$2,000.00 for each month that had passed since January 1995 less the \$1,500.00 payment that he received early that year.

IV

Next, the court must determine whether the Debtor assumed the debt to Clyde Moore that accrued during the partnership and whether the compensation agreement ended when the partnership was dissolved in 1995 or whether it continued with the Debtor. The evidence at trial does not establish whether the partnership merged directly into the Debtor or whether it merged into Le Banquet, Ltd., Inc. and then into the Debtor. In addition, the evidence does not establish

the exact date on which the partnership dissolved and either Le Banquet, Ltd., Inc. or the Debtor began operating the restaurant.

Clyde Moore and John Stanley testified that they were not sure when the transitions occurred. Chris Gibbs, the partner responsible for financial and business matters, testified that both transitions occurred in 1995. The fact that the lease of the restaurant property was executed by Le Banquet Ltd., Inc. suggests that the partnership had dissolved and Le Banquet Ltd., Inc. had begun operating the restaurant by June 1995. Chris Gibbs testified that Le Banquet Ltd., Inc. received all of the partnership assets and liabilities. He also testified that Le Banquet Ltd., Inc.'s assets and liabilities were then merged into the Debtor in order to facilitate financing for developing the restaurant and the other properties. The fact that the Debtor executed a Construction / Commercial Note on December 8, 1995, guaranteed by Chris Gibbs, John Stanley, and Clyde Moore, among others, to obtain financing for that purpose suggests that the transition to the Debtor had been made by December 8, 1995.

The Debtor's position on this issue is not clear beyond its belief that the partnership dissolved in May 1995 and that it does not owe a debt to Clyde Moore. The Debtor admits in its proposed findings of fact and conclusions of law that "Gap operated the restaurant during 1995." It also admits that all of the partnership's "assets and liabilities merged into Gap. Based upon the merger, the partnership ended in 1995. The merger into Gap dissolved the partnership." In addition, the Debtor admits that Mr. Moore "leased the Restaurant and all its assets that belonged to the partnership on a long term lease to a different entity, La [sic] Banquet, Ltd., Inc." Thus, the Debtor appears to argue that Le Banquet, Ltd. transferred its assets directly to the Debtor.

That position, however, is in direct conflict with the testimony of Chris Gibbs, who controlled the merger and has been the president of the Debtor at all times relevant to the issue. Chris Gibbs testified that all of the partnership's assets and liabilities were first merged into Le Banquet Ltd., Inc., which then merged into the Debtor.

The Tennessee Uniform Partnership Act addresses the “[l]iability of persons continuing [partnership] business for preexisting debts,” in part, as follows:

(d) When all the partners or their representatives assign their rights in the partnership property to one (1) or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

TENN. CODE ANN. § 61-1-140 (1989). For the purposes of the act, “person” is defined as “any individual, partnership, corporation and other association.” TENN. CODE ANN. § 61-1-101(5) (Supp. 1999).

With respect to for-profit business corporations, Tennessee law requires that, “[w]hen a merger becomes effective . . . (3) All liabilities of each corporation or limited partnership that is a party to the merger shall be vested in the surviving corporation or limited partnership.” TENN. CODE ANN. § 48-21-108(a) (1995).

In the present matter, the partnership's assets and liabilities were transferred either directly to the Debtor, or first to Le Banquet Ltd., Inc. and then to the Debtor. In either circumstance, the partnership's liability to Clyde Moore for compensation accrued during the partnership was

ultimately transferred to the Debtor and is still owing pursuant to TENN. CODE ANN. §§ 61-1-140(d) and 48-21-108(a).

V

Regarding the effect of a merger on contracts, “the general rule [is] that in the case of a merger the corporation which survives is liable for the debts and contracts of the one which disappears.” *John Wiley & Sons, Inc. v. Livingston*, 84 S. Ct. 909, 914 n.3 (1964). Compare *Golden State Bottling Co., Inc. v. National Labor Relations Bd.*, 94 S. Ct. 414, 424 n.5 (1973) (explaining that where there is a sale of corporate assets, “the general rule of corporate liability is that, when a corporation sells all of its assets to another, the latter is not responsible for the seller’s debts or liabilities, except where (1) the purchaser expressly or impliedly agrees to assume the obligations; (2) the purchaser is merely a continuation of the selling corporation; or (3) the transaction is entered into to escape liability”) and 19 AM.JUR.2D *Corporations* § 2512 (1986) (distinguishing a sale of corporate assets from a merger). The effect of a merger on liabilities and contracts has also been explained as follows:

Generally speaking, where a corporation succeeds to the assets of another corporation by virtue of a merger or consolidation and not by way of purchase, the new or resulting corporation is liable for the debts and contracts of the other corporation, whether they rise ex contractu or ex delicto, although there is no statute imposing a liability and no agreement assuming it.

19 AM.JUR.2D *Corporations* § 2715 (footnotes omitted).

In the present matter, the actions of the parties demonstrate that the compensation agreement continued after the partnership ended and into the time period in which either the partnership or

Le Banquet Ltd., Inc. merged with the Debtor. Each of the three original partners continued to perform his part under the agreement. John Stanley continued to manage the kitchen and was fully compensated under the agreement until February 1996 when he left the business. Chris Gibbs testified that he received \$50,000.00 a year from the Debtor as compensation for his management of the business and its financial affairs in 1996, 1997, 1998, and for part of 1999. He testified that in 1999 he decided that he should be compensated at \$75,000.00 a year and that he received that salary from March through October 1999. The amounts that he received were in excess of what he was due under the agreement.

Clyde Moore, however, received no compensation under the agreement, despite the fact that the Debtor received the benefit of that contract by continuing to use Clyde Moore's beverage license, furnishings, and antiques in the operation of the restaurant. Under the general rule that a corporation is liable for the debts and contracts of the corporation that merges into it, the Debtor is liable for the partnership's obligation under the agreement to pay Clyde Moore \$2,000.00 each month in exchange for the use of his license and property.

VI

The Debtor also argues that Clyde Moore agreed to release his compensation claim against the Debtor under the Real Estate and Stock Purchase Agreement. In addition, the Debtor asserts that Clyde and Maureen Moore agreed to release their claim against the Debtor for rent owing under the November 13, 1995 Commercial Lease of the inn property in the same agreement.

Specifically, the Debtor relies on the following language in the Real Estate and Stock Purchase Agreement: “Buyer [Gibbs] shall also obtain releases of all obligations of Seller [Moore] to Gap Enterprises, Inc. and Leslie and Joanne Gibbs.”

The Debtor cites that language as proof that the Moores intended to release the Debtor from its obligation under the November 13, 1995 Commercial Lease and under the compensation agreement at the closing of the Real Estate and Stock Purchase Agreement. It explains that their failure to sign a termination of that lease was an oversight. It asserts that the existence of other lease terminations shows the parties’ intent under the Real Estate and Stock Purchase Agreement to terminate the Commercial Lease also.

The Debtor’s argument lacks merit. First, the plain language of the Real Estate and Stock Purchase Agreement contemplates the release of the Moores from their obligations to the Debtor. It does not contemplate the release of the Debtor from its obligations. Second, the executed lease terminations do not mention the Real Estate and Stock Purchase Agreement or the Commercial Lease at issue and do not even suggest that it was also to be released.

The Moores did not release their claim for unpaid rent under the November 13, 1995 Commercial Lease and Clyde Moore did not release his claim for compensation.

VII

In summary, while operating as a partnership, Clyde Moore, Chris Gibbs, and John Stanley agreed that they should each receive compensation for performing specific duties. Clyde Moore performed his obligations under that agreement from January 1995 through September 1999. When the partnership ended, the debt owing to Clyde Moore was assumed by its successor and was ultimately assumed by the Debtor. In addition, the Debtor continued to benefit from the terms of that agreement with respect to each of the original partners, including Clyde Moore, and compensated each of them, except for Clyde Moore. Accordingly, his claim against the Debtor for compensation under that agreement from January 1995 through September 1999 is valid. Further, Clyde and Maureen Moore did not release their claim for unpaid rent under the November 1995 Commercial Lease and Clyde Moore did not release his claim for compensation. The Debtor's objection to their claims will be overruled.

An appropriate order will be entered.

FILED: April 10, 2000

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.

UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 99-31332

GAP ENTERPRISES, INC.
d/b/a CUMBERLAND GAP CONVENTION CENTER
d/b/a CUMBERLAND GAP INN
d/b/a SHILLALAH VILLAGE
d/b/a YE OLDE TEA & COFFEE SHOPPE

Debtor

ORDER

For the reasons stated in the Memorandum on Debtor's Objection to Claims filed this date, the court directs that the Objection to Claims filed by the Debtor on December 6, 1999, as amended by an Amended Objection to Claims filed December 7, 1999, whereby the Debtor objects to the claim of Clyde Moore filed on October 4, 1999, in the amount of \$112,000.00 and to the claim of Clyde and Maureen Moore filed on October 4, 1999, in the amount of \$6,800.00, is OVERRULED and the claims are allowed as filed.

SO ORDERED.

ENTER: April 10, 2000

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE